IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (MVA) No.364 of 2001.

Judgement reserved on: 27.6.2007

Date of decision: 27.7.2007.

Madan Lal Joshi **…….Appellant**

Vs.

Smt. Veena and others **…. Respondents.**

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The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : **Mr. J.L. Bhardwaj, Advocate.**

For the Respondents : **Mr. Ramakant Sharma, Advocate, for respondent No.1.**

Ms. Devyani Sharma, Advocate, for respondent No.3.

None for respondent No.2.

Kuldip Singh, Judge.

1. The owner of the car No.HP-03-0105, is in appeal against the award dated 26.6.2001 passed by Motor Accident Claims Tribunal, Shimla in M.A.C.C. No.64-S/2 of 1999, dismissing claim of Rs.40,000/- of the car owner, on account of damage caused to the car due to accident. The parties are referred in the same manner as in the impugned award.

2. The facts in brief are that car No. HP-03-0105 owned by petitioner was involved in an accident due to rash and negligent driving on the part of driver of bus No.HP-14-4699 owned by

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Whether the reporters of the local papers may be allowed to see the Judgment?

respondent No.1, and was being driven at the time of accident by respondent No.2. The respondent No.3 is the insurer of the bus. It has been alleged that car was being driven by Rohit son of petitioner from Kunihar to Shimla. Respondent No.2-driver of bus No.HP-14-4699 was driving the bus rashly and negligently, as a result of which, the bus struck against the car at about 7.30 a.m. on 15.2.1999 at Shardaghat, an FIR No.11/99 was registered under Sections 279-337 IPC, at Police Station, Kandaghat. The car suffered extensive damage in the accident and therefore, the owner claimed Rs.40,000/- by way of petition on account of damage caused to the car.

3. The respondents No.1 and 2 were proceeded exparte. The respondent No.3 contested the petition and took preliminary objections that insured had committed breach of terms and conditions of insurance policy, there was no effective and valid driving licence of the driver at the time of the accident. The accident took place due to the negligence of the car driver. On merits, the claim of the claimant-petitioner was denied by again taking the plea that respondent No.1 has committed breach of the terms and conditions of the insurance policy

4. The Tribunal has held that accident took place due to rash and negligent driving on the part of the driver of the bus but did not allow any compensation to the claimant-petitioner by returning the finding that United India Insurance Company insurer of the car had already paid Rs.17,896/- to the petitioner and the petitioner has not proved the claim set up in the case. The Tribunal ultimately dismissed the petition and therefore, owner of the car is in appeal.

5. I have heard the learned counsel for the parties and have also gone through the record.

6. The learned counsel for the owner of the car has submitted that Tribunal has misconstrued and mis-interpreted the material on record. The petitioner is entitled to amount claimed in the petition. The learned counsel representing respondents No.1 and 3 have supported the impugned award.

7. PW-1 Madan Lal Joshi has stated that he has spent approximately Rs.40,000/- on the repairs of his car and has placed on record Ex.P-1 to Ex.P-10 vouchers regarding expenses incurred by him on repairs. He has stated that his car was insured with United India Insurance Company where he lodged the claim and insurer of car had paid Rs.17,896/- to him. PW-3 Rajnish Sharma, Surveyor, United India Insurance Company has proved his report Ex.P-12.

8. It is clear from surveyor report Ex.P-12 that petitioner had claimed Rs.36310/- on account of damages to the car but the surveyor has assessed loss of Rs.17896.56 only. The amount of Rs.17896.56 includes Rs.8596.56 on account of cost of spare parts and Rs.9300/- on account of labour charges. An amount of Rs.17896/- was actually paid by the United India Insurance Company to the petitioner-owner of the car.

9. The Tribunal has considered oral and documentary evidence on record and has returned the finding that surveyor has assessed the damage on the basis of Ex.P-8 and Ex.P-9, both dated 9.3.1999. In fact Ex.P-8 and Ex.P-9 constitute one document and their consolidated amount comes Rs.10,106/-. The Tribunal has

considered documents Ex.P-1 to Ex.P-7 and Ex.P-10 on record and has given reasons for not relying these documents for assessing the damage to the car.

10. The car owner has atleast proved expenses of Rs.10,106/- incurred by him for repairing the car but, he has not been allowed even this amount by the Tribunal on the ground that insurer of the car had paid Rs.17896/- to the petitioner. The documents though admitted in evidence but have not been proved in accordance with law by petitioner. PW-1 in whose statement Ex.P-8 and Ex.P-9 were admitted in evidence was not cross-examined. Ex.P-8 and Ex.P-9 are carbon copies of the originals and were issued to PW-1 and hence were duly proved by PW-1 in his statement. The amount of Rs.17896/- was paid by the insurer of the car to the petitioner on account of separate contract between petitioner and the insurer of the car. This will not absolve the respondents to pay compensation to the petitioner on account of damage to the car as a result of accident involving the car and bus No.HP-14-4699. The Tribunal has recorded a finding that accident took place due to rash and negligent driving of the bus. This finding has attained finality.

11. The owner of the car has proved that he has spent Rs.10106/- vide Ex.P-8, Ex.P-9 for repairing the car after the accident. The accident took place due to negligence of the bus driver. The respondent No.3 has admitted the insurance of the bus in reply to para-15 of the petition, photo copy of cover note of the bus though on record has not been proved. The car was damaged due to rash and negligent driving of bus driver respondent No.2. The

violation of policy was to be proved by respondent No.3 but insurer has failed to prove any violation of the policy. Therefore the respondents No.1 to 3 are liable to pay Rs.10106/- to the claimant on account of damage to the car in the accident irrespective of the fact that the owner of the car has received Rs.17896/- from the insurer of the car under a separate contract. The statutory liability of the respondent No.3 insurer in the present case is Rs.6000/- under Section 147 of the Motor Vehicle Act, 1988 for 3rd party property damage. There is no bar to the insurer to give more coverage under a contract to the insured for 3rd party property damage than provided under Section 147 of the Act. The car owner has not proved that liability of respondent No.3 insurer was more then the statutory liability towards 3rd party property damage. Therefore, out of Rs.10106/- the liability of respondent No.3-insurer is Rs.6000/- and the liability of respondents No.1, 2, owner and driver of the bus respectively is Rs.4106/- jointly and severally. On the share of compensation the respondents are liable to pay 9% interest from the date of filing of the petition i.e. 1.9.1999 till the date of payment. The contrary findings of the Tribunal are accordingly set aside.

12. The result of the above discussion is, the impugned award is set aside and award of Rs.10106/- is passed in favour of the claimant-petitioner, owner of the car No.HP-03-0105 and against the respondents. Out of Rs.10106/- the respondent No.3 insurer shall pay Rs.6000/- and respondents No.1 and 2 shall pay balance Rs.4106/- jointly and severally to the claimant-petitioner. The respondents on their respective shares of the award amount shall

also be liable to pay 9% interest per annum to the claimant-petitioner from the date of filing of the petition i.e. 1.9.1999 till the date of payment. No costs.

(Kuldip Singh)
Judge.

July 27 , 2007
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